

Message Text

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ACTION OES-04

INFO OCT-01 EUR-12 ISO-00 AID-05 CEQ-01 CIAE-00 OFA-01

COME-00 DODE-00 EB-07 EPA-01 INR-07 IO-10 L-03 NSF-01

NSC-05 NSAE-00 PM-04 USIA-06 SS-15 SP-02 FEA-01 /086 W

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R 192215Z AUG 75

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 7297

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E.O. 11652: N/A

TAGS: SENV, CA

SUBJ: MEETING ON GARRISON DIVERSION REFERENCE TEXT

1. POST AND GUDGEON MET AUGUST 19 WITH SHORTLIFFE, BRADY AND SMITH OF EXTAFF AND ROBINSON AND JAMES OF ENV CANADA TO DISCUSS US NON-PAPER INCORPORATING TWO PROPOSED AMENDMENTS. THE MEETING PRODUCED REVISED AD REFERENDUM TEXT AS FOLLOWS:

(A) FIRST CLAUSE, FIRST SENTENCE, SECOND PARA: REVISE TO READ
"THE GOVERNMENT OF CANADA HAS CONCLUDED...."

(B) ADD AS FIRST SENTENCE, THIRD PARA: "THE GOVERNMENT OF THE UNITED STATES HAS REACHED NO FINAL CONCLUSION AS TO WHETHER THE GARRISON DIVERSION UNIT, AS PRESENTLY ENVISAGED, WOULD BE CONSISTENT WITH THE RIGHTS OF THE UNITED STATES AND OF CANADA TO THE EQUITABLE USE OF WATERS CROSSING THE BOUNDARY AND WITH ARTICLE IV OF THE BOUNDARY WATERS TREATY."

(C) REVISE LAST CLAUSES OF FOURTH PARA TO READ AS FOLLOWS:
"...AND TO MAKE RECOMMENDATIONS AS TO SUCH MEASURES, INCLUDING MODIFICATIONS, ALTERATIONS OR ADJUSTMENTS TO THE GARRISON DIVERSION UNIT, AS MIGHT BE TAKEN TO ASSIST GOVERNMENTS IN ENSURING THAT THE PROVISIONS OF ARTICLE IV OF THE BOUNDARY WATERS TREATY ARE HONORED."

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2. FIRST CHANGE RESULTS FROM CONCLUSORY LANGUAGE IN NEW SENTENCE PRESENTING US VIEWS ON PROJECT. CANADIAN SIDE REITERATED FIRMLY THAT GOC DID NOT ENDORSE "NO DEGRADATION" INTERPRETATION OF ARTICLE IV, AND ACCEPTED ARGUMENT CONCERNING "AVOID ADVERSE EFFECTS" FORMULA, ALTHOUGH INDICATING THEY HAD NO PARTICULAR PROBLEM WITH KEEPING IT. PREVENT, REDUCE AND CONTROL FORMULA AS ANTICIPATED NOT APPEALING TO THEM, AND THEY SUGGESTED POSING TRADITIONAL "INJURY QUESTION" TO IJC AS ALTERNATIVE. US SIDE DISCUSSED RESERVATIONS ABOUT DIRECTING REFERENCE ON LEGAL PLANE, UTILITY OF TECHNICAL AND COMMONSENSE APPROACH TO REFERENCE, AND MENTIONED IN THIS REGARD CURRENT COMPOSITION OF COMMISSION, WHICH HAD GREAT EFFECT ON SHORT-LIFFE. HE RESPONDED WITH SUGGESTION OF DROPPING ANY REFERENCE TO ADVERSE EFFECTS OR INJURY, WHICH LED TO NEW AD REF FORMULA. WHILE ADMITTEDLY CHOPPY, NEW FORMULA DOES ELIMINATE "AVOID ADVERSE EFFECTS" PROBLEM, AND THE "TO ASSIST GOVERNMENTS" CLAUSE BOTH UNDERLINES THAT IT IS UP TO GOVERNMENTS TO INTERPRET THE TREATY AND KEEPS REQUEST FOR IJC RECOMMENDATIONS A STEP REMOVED FROM DIRECT RELATION TO ARTICLE IV AS IN OPENING CANADIAN POSITION ON JULY 28 (OUR FALLBACK POSITION).

3. WE AGREED TO REFER NEW TEXT FOR WASHINGTON COMMENT/APPROVAL, AND UNDERTOOK TO REPLY TO GOC IN NEXT FEW DAYS. TIME FACTOR OF CONSIDERABLE CONCERN TO SHORTLIFFE, WHO ALREADY PROCEEDING TO SEEK MANITOBA CONCURRENCE AND WISHES SUBMIT ASAP TO EXTAFF SECSTATE MACEACHEN. IF LATTER APPROVES, REFERENCE MUST BE SUBMITTED FOR FULL CABINET APPROVAL.
PORTER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, TEXT, GARRISON DIVERSION PROJECT, INTERGOVERNMENTAL COOPERATION, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975OTTAWA03116
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750287-0262
From: OTTAWA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750840/aaaabinp.tel
Line Count: 89
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION OES
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 07 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <07 MAY 2003 by ifshinsr>; APPROVED <07 MAY 2003 by MorefiRH>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MEETING ON GARRISON DIVERSION REFERENCE TEXT
TAGS: SENV, CA, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006